question submitted to the jury was, the admission of proof on the part of the plaintiff, that he had an open account with R. D. Cornwell, the plaintiff in the execution. Plaintiff by his bid of the sleigh, the same having been accepted by the sheriff and the plaintiff in the execution, became a debtor to such plaintiff for the amount of his bid. The plaintiff by crediting such amount on the execution discharged the defendant therein from such sum, and was estopped from denying payment of that sum by her. For the purpose of showing a fact, certainly not very important, how the matter was adjusted between the purchaser and the plaintiff in the execution, the judge permitted the fact that there was an open account between them to be proved. It was not material or important, and its admission is no ground for a new trial.

Upon a careful examination of the whole case, I am clearly of the opinion that it has been rightly disposed of, and that the judgment should be affirmed with costs.

PORTER, J., took no part in the decision: all the other judges concurring,

Judgment affirmed.

Supreme Court of New York.

HIRAM LEWIS *v.* THE NEW YORK CENTRAL RAILROAD COMPANY.

The fare of a passenger on a railroad is a *debt* within the Acts of Congress called the Legal Tender Acts, although it be demanded and paid before the passenger has been carried any part of the way.

Where a certain sum per mile has been established as the legal fare for carrying a passenger on a railroad, the company is bound to accept payment of the fare in United States notes at their legal value.

CASE agreed upon. The plaintiff claims judgment for the penalty of $50, for defendants asking and receiving a greater fare from him on their railroad from Syracuse to Canastota, than they were authorized by law to demand and receive of him.

Charles B. Sedgwick, for plaintiff.

D. Pratt, for defendants.

The opinion of the court was delivered by

BALCOM, J.—On the 7th day of May 1867, the plaintiff applied at the office of the defendants, at the city of Syracuse, to purchase

a ticket for passage on the defendants' railroad from that city to Canastota, in the county of Madison. The defendants asked and demanded of the plaintiff, for such ticket and passage, the sum of forty-four cents in lawful *coin* of the United States or fifty-five cents in paper currency. The plaintiff offered and tendered to the defendants forty-four cents in United States notes in payment for such ticket and passage, which the defendants refused to receive; and thereupon the plaintiff paid and the defendants received for such passage and ticket fifty-five cents in United States notes. The plaintiff handed to the defendants' agent a one-dollar United States note and such agent paid back to the plaintiff forty-five cents in fractional currency; which was the way the plaintiff paid for such ticket and passage. The distance from Syracuse to Canastota is twenty-two miles.

Chapter 76 of the laws of 1853 (Laws of 1853, p. 113, § 7) requires the defendants to carry way passengers on their road at a rate not to exceed two cents per mile. And it is provided by chapter 185 of the laws of 1857 (Laws of 1857, vol. 1, p. 432), that "any railroad company which shall ask and receive a greater rate of fare than that allowed by law, shall forfeit fifty dollars, which sum may be recovered, together with the excess so received, by the party paying the same."

The Act of Congress, approved February 25th 1862, authorizing the issue of United States notes, declares that they shall "be lawful money and a legal tender for all debts, public and private, within the United States, except duties on imports and interest," &c.

The Court of Appeals has settled the question in this state that this Act of Congress is constitutional and valid: 27 N. Y. Rep. 400.

The only material question, therefore, for determination in this case is, whether the Act of Congress is broad enough to require the defendants to take United States notes in payment of fare on their road, when they demand and receive such fare in advance of transportation on their road.

It is not disputed by the plaintiff's counsel that the defendants may refuse to carry any person in their passenger cars who will not pay the legal fare before he is carried any distance in their cars.

It is claimed by the defendants' counsel that no *debt* is due from

a passenger to the defendants before he is carried any distance in their cars, and that, as the Act of Congress only makes the notes of the United States a legal tender for *debts*, the defendants may exact payment of fare of passengers in advance of transportation in gold or silver coin of the United States, or may require them to pay its market value in United States notes. Is such fare to be deemed and regarded a debt within the meaning of the Act of Congress, when demanded of a passenger before he enters the defendants' cars to be carried from one station to another on their railroad? A MS. opinion of Mr. Justice GRIER, of the Supreme Court of the United States, in *The Philadelphia and Reading Railroad Co.* v. *Morrison and Others*, favoring the position that such fare, when exacted in advance, is not a debt within the meaning of the Act of Congress, has been presented to us for our consideration. That opinion was delivered in the United States Circuit Court for the Eastern District of Pennsylvania; and if there be no distinction in principle between the case in which it was delivered and this, it is not controlling authority in this case. It is only entitled to the respect due to the opinion of an able and learned judge upon a question somewhat similar to the one in this case. But I think there is a distinction between that case and this, though it is difficult to ascertain from the opinion in that case the precise facts on which it was based. If, however, there be no material distinction in principle between the two cases, I am constrained to say, my opinion is, Mr. Justice GRIER has put too narrow a construction upon the Act of Congress; and that according to the true meaning of that act the defendants are bound to accept United States notes, issued under such act, in payment of fare upon their railroad when demanded in advance of transportation on such road.

The defendants are common carriers of persons, and are therefore under a legal obligation to carry all persons who apply for passage on their railroad, and tender the legal fare. Angell says: "There is an implied engagement on the part of public carriers of persons not to refuse those who apply for seats by their conveyance, the privilege of travelling in such a manner, provided there is room for them, and a tender of, or offer to pay, the fare is made at the time:" Angell on Carriers, 3d ed., § 524. Edwards says, the duties of a common carrier of persons "resemble those of the common carrier of goods; like him, he has

entered into *an engagement with the public*, and is bound to serve all who require his services." He also says, such a carrier of persons "has a right to demand prepayment of his hire, but is not at liberty to choose between those whom he will and will not receive:" Edwards on Bailments 577. The same doctrine is laid down in Redfield on Railways 344, and it is undisputed elementary law.

This case is the same in principle as it would be if the parties had previously made a special contract, which bound the defendants to carry the plaintiff as a passenger in one of their cars, from Syracuse to Canastota, on being paid the legal fare between those places, viz., two cents per mile. If the parties had made such a contract, the fare between those places would have been a debt due from the plaintiff to the defendants, at the time the former applied at the office of the latter for a passage, and offered to pay for a ticket that would entitle him to a ride in one of their cars from one of such places to the other; and in that case United States notes would have been a legal tender for such fare. Now as the rights and obligations of the parties are placed on the same footing by the law of the land that they would have been by such a special contract as I have supposed, I am of the opinion the fare the plaintiff offered to pay the defendants from Syracuse to Canastota should be deemed a debt that was due from the former to the latter, within the meaning of the Act of Congress, at the time the offer was made to pay the same.

If these views are correct, the plaintiff had the right to pay his fare from Syracuse to Canastota in United States notes, at the value expressed on the face of the same; and the defendants were guilty of extortion in exacting of him payment of such fare at a higher rate than two cents per mile in such notes.

The legal fare the defendants had the right to demand and receive of the plaintiff was forty-four cents, and they compelled him to pay them fifty-five cents in United States notes. The extortion, therefore, was eleven cents. For which eleven cents and the penalty of $50, I am of opinion the plaintiff is entitled to a judgment with the costs allowed in such a case, by section 373 of the Code.

MASON and BOARDMAN, JJ., delivered opinions in which they came to the same conclusion.

Judgment accordingly.